

Opinion of the Court.

UNITED STATES *v.* MUELLER.MUELLER *v.* UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

Submitted December 22, 1884.—Decided January 19, 1885.

Under contracts to furnish stone to the United States for a building, and to saw it, and cut and dress it, all as "required," the contractor may recover damages for enforced suspensions of, and delays in, the work, by the United States, arising from doubts as to the desirability of completing the building with the stone, and on the site, which involved the examination of the foundation and the stone by several commissions.

A contract to furnish "all of the dimension stone that may be required in the construction" of a building does not include dimension stone used in "the approaches or steps leading up into the building."

The facts in this case are stated in the opinion of the court.

Mr. Enoch Totten for Mueller.

Mr. Solicitor-General for United States.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

Before July 23, 1872, the United States advertised for proposals for furnishing and delivering at the site of the new United States Government building to be erected at Chicago, Illinois, "all of the dimension stone required in its construction." John M. Mueller submitted a proposal, dated July 23, 1872, "to furnish dimension stone in accordance with the attached advertisement," at specified prices. This proposal was accepted by a notice to him which said: "You are hereby notified that your proposal to furnish all the dimension stone that may be needed for the exterior of the new custom-house building to be erected in the city of Chicago," for specified prices, "the stone to be delivered at the site of the building, and in such quantities and at such times as the Department, or its duly authorized agent, may direct, is accepted."

On the 2d of September, 1872, a written contract, in pursuance of such advertisement and proposal, was made between the United States and Mueller, which described Mueller as the

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person "to whom was awarded a contract for certain dimension stone required in the construction of the new custom-house, court-house, and post-office building, at Chicago, Illinois, on his bid received under advertisement, and dated July 23, A.D. 1872." By the contract, which was made on behalf of the United States by the supervising architect of the Treasury Department, Mueller agreed to furnish from his quarry, "and deliver at the site of the aforesaid buildings, all of the dimension stone that may be required in the construction of said building," and to furnish and deliver 100,000 cubic feet of the stone on or before the 1st of January, 1873, "and the remainder at such times, and in such quantities, as may be required" by the supervising architect, and the United States agreed to pay to Mueller certain specified prices. The stone was known as "Buena Vista free stone."

On the 9th of December, 1871, Mueller entered into another contract with the United States, on his bid made under an advertisement, by which he agreed to furnish the cutting of the Buena Vista free stone to be used in the basement story, sill and lintel course of said building, in accordance with a specification attached, by which he was to deliver the stone, cut and ready for setting, "promptly and as required by the superintendent, so that the progress of the work will not be interrupted." By the contract, all the stone for the area wall was to be cut, lewised and ready for setting on or before the 1st of March, 1873, and the pier-stones and sill and lintel course as soon thereafter as required by the superintendent.

On the 18th of July, 1873, Mueller entered into another contract with the United States, by which he agreed "to furnish such number of mechanics and laborers as may be required from time to time" by the superintendent, and all of the tools and materials necessary to cut, dress, and, if necessary, box, all of the stone required for the construction of said building, "and to cut such stone in such manner and at such place as may be required" by the superintendent, and to furnish, free of cost to the Government, all shops, sheds and machinery necessary to cut, dress and box said stone; and it was agreed, that all materials required for the cutting or boxing of said stone should be

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supplied only upon the requisition of the superintendent, and that not less 250 stone-cutters, with the necessary complement of mechanics and laborers, should be employed "at any time during the progress of the work;" Mueller to be paid for the labor full market rates "of the labor" actually performed, increased by 15 per centum, and for the materials the lowest trade prices, increased by 15 per centum thereof.

On the 4th of August, 1873, Mueller entered into another contract with the United States, on a bid of his, by which he was to furnish all the tools, machinery, shops and sheds, &c., required to saw, and to saw such of the stone supplied under his contract of September 2, 1872, as might be found necessary by the superintendent, the sawing to be done at such times and in such quantities as the superintendent might require, and Mueller to be paid a specified price for all stone sawn.

Mueller brought a suit, on these contracts, against the United States, in the Court of Claims, to recover sundry items, and, among them, pay for certain stones furnished, for which he had not been fully paid; also damages for suspensions and delays, enforced and caused by the United States, of work under the contracts, which kept Mueller and his men, machinery, plant and capital idle; also damages because dimension stone was required for the construction of "the steps and approaches leading up into said building," but he was not allowed to furnish it.

The Court of Claims allowed to him \$20,000 as damages for suspensions of the work, enforced by the United States, and \$2,758.25 additional pay for the stones referred to, and ~~rejected~~ all the other items sued for, and rendered a judgment in his favor for \$22,758.25. Among the items rejected was the claim for damages in respect to the stone for the "steps and approaches." The United States have appealed because of the allowance of the \$20,000; and Mueller has appealed as to the item for "steps and approaches."

The finding of facts by the Court of Claims as to the \$20,000 item is this: "On the 13th of May, 1875, claimant was directed to stop shipment of stone until further orders, and on

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the 15th he was directed to stop cutting. On the 25th of May he was notified formally, in accordance with the language of the contract, 'that the party of the first part does not require that any more stock should be delivered at the present time. Whenever more is required you will be notified.' On the 16th of October, 1875, he was notified to resume cutting. In the summer and fall of 1877, when the work was nearing completion, he was directed to discharge workmen from time to time, so that the number was reduced below the minimum fixed in his contract. The work of sending forward stone was also resumed about the middle of October and continued until about the 1st of December. The second suspension lasted until about the middle of February. These suspensions arose from a well-founded doubt as to the desirability of completing the Chicago custom-house with the Buena Vista stone, and on the site. Several commissions made lengthy and exhaustive examinations of the foundation and stone, pending which the United States stopped the work. The damages resulting to the claimant therefrom were \$20,000."

The court was of opinion, that, as the delay was caused by a contemplated change of purpose in regard to the stone and the site, the enforced suspension and delay were unjustifiable, and not covered by the stipulations in the contracts that the stone and the work should be furnished as "required." 19 C. Cl. 591. We are of opinion that the court was correct in its view. *United States v. Smith*, 94 U. S. 214.

The finding of facts as to the "steps and approaches" was as follows: "The approaches or steps leading up into the building required, according to the plans for said building, a large quantity of cut dimension stone, to wit, 17,473.10 cubic feet, and, although the claimant was able and willing to furnish the same under his agreement, the officers of the United States refused to permit him to furnish the same, but it does not appear that he made any proposition to furnish it. The defendants determined that granite would be more suitable than sandstone for these approaches, and the amount required was furnished by other parties. If the claimant had been allowed to furnish sandstone, he would have made a

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profit of \$6,115.58." The court was of opinion that there was no violation of the contract. 19 C. Cl. 592.

The expression "steps and approaches leading up into said building," used in the petition, and the expression "approaches or steps leading up into the building," used in the finding of facts, are, perhaps, somewhat vague. But we must infer that the expression used in the finding means structures wholly outside of the building, not a part of it, but constituting a means of ascent on the way into the building. In this view, the stone used in the approaches or steps was not stone used in the construction of the building, within the meaning of the first contract and the original advertisement. The approaches may have been of cut dimension stone, and necessary for use in connection with the building after it was constructed; but, in the absence of anything more definite in the finding, it cannot be said that they were in the building, or a part of it.

Judgment affirmed.



CONSOLIDATED SAFETY-VALVE COMPANY v.
CROSBY STEAM GAUGE & VALVE COMPANY.

SAME v. SAME.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MASSACHUSETTS.

Argued December 10, 11, 1884.—Decided January 19, 1885.

Letters patent No. 58,294, granted to George W. Richardson, September 25, 1866, for an improvement in steam safety-valves, are valid.

Under the claim of that patent, namely, "A safety-valve, with the circular or annular flange or lip *c c*, constructed in the manner, or substantially in the manner, shown, so as to operate as and for the purpose herein described," the patentee is entitled to cover a valve in which are combined an initial area, an additional area, a huddling chamber beneath the additional area, and a strictured orifice leading from the huddling chamber to the open air, the orifice being proportioned to the strength of the spring, as directed.

Richardson was the first person who made a safety-valve which, while it automatically relieved the pressure of steam in the boiler, did not, in effecting